

**Sutherland, Asbill & Brennan**

1275 PENNSYLVANIA AVENUE, N. W.

WASHINGTON, D. C. 20004-2404

TEL: (202) 383-0100

FAX: (202) 637-3593

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

OCT 11 12 38 PM 1994

999 PEACHTREE STREET, N.E.  
ATLANTA, GEORGIA 30309-3996  
(404) 853-8000

FEDERAL BUREAU OF INVESTIGATION  
DEPARTMENT OF JUSTICE  
NEW YORK, NEW YORK 10020-1700  
(212) 332-3000

October 6, 1994

Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

ADR 1994-34

Subject: New York Mercantile Exchange  
Our File No. 62751-08

Dear General Counsel:

On August 3, 1994, the New York Mercantile Exchange ("NYMEX") consummated a merger with the Commodity Exchange, Inc. ("COMEX"), pursuant to which COMEX became a subsidiary of NYMEX (hereinafter the "COMEX Division"). A copy of the Joint Proxy Statement relative to the merger between NYMEX and COMEX is appended to this letter as Annex A (the "Joint Proxy Statement").

NYMEX wishes to consolidate the operations of the separately segregated funds formerly sponsored by each exchange. It plans to dissolve the COMEX fund, which is registered as COMPAC ("COMEX PAC") and thereafter conduct all solicitations involving the COMEX Division through NYMEX Political Action Committee, Inc. ("NYMEX PAC"). On behalf of NYMEX and NYMEX PAC, we seek confirmation, by advisory opinion of the Federal Election Commission ("FEC" or the "Commission") pursuant to 11 C.F.R. Section 112.1, that, following this consolidation, NYMEX PAC lawfully may solicit Comex Division members.

### 1. Background

NYMEX is the nation's third largest futures exchange and the world's largest energy commodities market. COMEX Division is the world's most active precious metals market.

At closing of the merger between NYMEX and COMEX, former COMEX Regular Members (referred to herein as "COMEX Division Members")<sup>1/</sup> were invested with trading privileges in futures markets operated within the COMEX Division and trading privileges associated with certain contracts traded now or in the future as the markets operated by NYMEX (the "NYMEX Division"). These trading privileges have significant economic value. COMEX Division Members also have an economic stake in NYMEX based upon its future economic success.

NYMEX intends immediately to wind up the affairs of COMEX PAC. Any funds remaining in COMEX PAC will be transferred to NYMEX PAC.<sup>2/</sup> Henceforth, NYMEX intends to maintain only one separate segregated fund for itself and its COMEX Division subsidiary.

## 2. Analysis

### 2.1 COMEX Division Members' Financial Interest in NYMEX

As a membership association, NYMEX freely may solicit persons defined by the Commission to be solicitable members of the exchange. In rules issued in August 1993, the Commission defined such solicitable persons as follows:

*Members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, *and either*:

---

<sup>1/</sup> As noted in the Joint Proxy Statement, COMEX Division "membership" categories include (using Joint Proxy Statement terms) COMEX Division Regular Members, COMEX Division Licensees, COMEX Division Member Firms, Option Seatholders, and Aluminum Seatholders. NYMEX acknowledges FEC holdings which restrict solicitation of "membership" classifications with lesser financial and voting stakes in organizations, and thus intends to solicit only those members referred to in the Joint Proxy Statement as "COMEX Regular Members" or "COMEX Division Regular Members" (referred to herein as "COMEX Division Members"). The term COMEX Division Members as used in this memorandum expressly *excludes* the following "membership" categories referred to in the Joint Proxy Statement: COMEX Division Licensees, COMEX Division Member Firms, Option Seatholders, and Aluminum Seatholders. See, e.g. FEC Advisory Opinion No. 1988-38, FEC Financing Guide ¶5940 (CCH); FEC Advisory Opinion No. 1988-39, FEC Financing Guide ¶5941 (CCH).

<sup>2/</sup> In accordance with FEC regulations, NYMEX PAC and COMEX PAC became affiliates upon consummation of the merger (11 C.F.R. § 100.5(g)(2) (1994). Accordingly funds may be transferred freely among them. 11 C.F.R. § 110.3(c)(1) (1994).

(i) *Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake (but not merely the payment of dues);*

(ii) *Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or*

(iii) *Are entitled to vote directly for all of those on the highest governing body of the membership association.*

58 Fed. Reg. 45774-75 (1993) (to be codified at 11 C.F.R. § 100.8(b)(4)(iv)(B)) (emphasis added); see also revised 11 C.F.R. § 114.1(e)(2)(i), *id.*

Thus, in order for NYMEX permissibly to solicit a member, such a person need meet only *one* of three criteria: (1) he or she must have a significant financial stake, (2) he or she must pay regular dues and have certain limited voting rights, or (3) he or she must be entitled to vote for all members of the highest governing board. We believe that COMEX Division Members qualify under the first leg of this test, because they have clear and substantial economic interest in NYMEX.

COMEX Division Members have limited voting rights in the COMEX subsidiary and currently do not pay dues (although they could be required to do so). However, their economic stake in the combined enterprise is significant. This stake takes three forms: (i) trading privileges in the COMEX Division; (ii) trading privileges with respect to contracts traded on the NYMEX Division and (iii) a substantial monetary interest in the success of the organization as a whole.

**COMEX Division Trading Privileges:** COMEX Division Members have retained all of their pre-merger trading privileges, which include the right to trade the gold, silver, copper, and Eurotop 100 contracts that previously were traded on COMEX. For COMEX Division Members, the ability to trade these contracts was their primary economic interest in the former independent exchange and for many, these rights define their livelihood.

**NYMEX Division Trading Privileges:** COMEX Division Members also obtained valuable trading privileges in the NYMEX Division, including full rights to trade new metals contracts and to trade on NYMEX ACCESS<sup>SM</sup> (electronic trading) all COMEX Division floor contracts and new metals contracts; proprietary trading privileges for an unlimited time in any platinum/palladium contracts; proprietary trading privileges for two years in each new energy contract, new metals contract, or replacement contract approved for trading on any part of NYMEX; and certain limited NYMEX floor trading rights in new energy contracts, new metals contracts and platinum/palladium contracts.

**Monetary Interest:** Although all equity interest in the COMEX Division subsidiary was relinquished by COMEX Division Members pursuant to the merger, they retained control of their individual seats, which they may freely sell for value. These seats currently are trading for approximately \$125,000 each. Ownership of a seat on the COMEX Division is the prerequisite to becoming a Comex Division Member and therefore obtaining trading privileges and other rights of COMEX Division Membership.

COMEX Division Members also are entitled to deferred cash payments (in addition to an initial cash payment of approximately \$40,000 paid to each former COMEX Regular Member). These deferred cash payments, estimated to be approximately \$25,000 per COMEX Division Member, represent an indirect financial interest in NYMEX. COMEX Division Members additionally have the right to share among themselves up to \$20 million in deferred ticker-based payments on the first four merger anniversaries. These payments essentially are dependent upon the success of the combined enterprise.

**Safeguards of Financial Stake:** The trading privileges and seat value underlying a COMEX Division Member's economic stake are protected by certain special provisions in the Merger agreement. For example, NYMEX is not allowed to increase the number of COMEX Division Memberships (and thus dilute the trading privilege value) without the concurrence of a majority vote of the COMEX Division Members. Further, pre-merger COMEX trading privileges for COMEX Division Members are similarly protected by the requirement that a majority vote (two-thirds for allowance of certain competing contracts) of COMEX Division Members would be required to concur in any termination or significant reduction of those trading privileges.<sup>3/</sup> Similarly, a two-thirds majority of the COMEX Division Members must concur in any decision to allow new persons to trade additional, former COMEX contracts.

---

<sup>3/</sup> See, e.g., Joint Proxy Statement at 141-146.

**Given these factors, COMEX Division Members plainly have a major stake in the NYMEX organization as a whole. They therefore fit within the category of persons defined as "solicitable persons" within membership organizations and should be solicitable directly by NYMEX PAC.**

## **2.2 Solicitation of COMEX Division Members Based Upon the Auxiliary Relationship Between NYMEX and the COMEX Division Subsidiary**

**The COMEX Division is a corporate subsidiary of NYMEX. Thus, if COMEX Division Members were held to be "members" of the COMEX Division but not "members" of NYMEX, COMEX Division Members nevertheless would be directly solicitable by NYMEX as members of an auxiliary or affiliate organization (*i.e.*, the COMEX Division).**

**FEC regulations provide that "[a]ll committees (including a separate . . . segregated fund . . . ) established, maintained or controlled by the same corporation, . . . including any parent, subsidiary, branch, [or] division . . . thereof, are affiliated." 11 C.F.R. § 100.5(g)(2) (1994). Affiliated committees share a single limit on contributions if they are "established, financed, maintained or controlled by . . . [a] single corporation and/or its subsidiaries." 11 C.F.R. § 100.5(g)(3) (1994).**

**An FEC Advisory Opinion issued in 1982 provides further:**

**[W]here one incorporated membership organization maintains such control over a second like organization as to indicate affiliation within the meaning of the Commission's regulations, the PAC of the first organization may extend its solicitable class to include the members of its affiliate, as well as its own members.**

**FEC Advisory Opinion 1981-55, FEC Financing Guide ¶ 5635 (CCH). Accordingly, even if it were to be held that COMEX Division Members are not solicitable members of NYMEX itself, solicitation of them is allowed on grounds of affiliation.**

## **2.3 Unnecessary Duplication of Effort and Regulatory Oversight Resulting from Continued Operation of Two Committees**

**If NYMEX PAC is unable to solicit COMEX Division Members, NYMEX's only option would be to continue the operation of COMEX PAC. By virtue of the merger, however, NYMEX PAC and COMEX PAC are now affiliated committees.**

*See* 11 C.F.R. Section 100.5(g)(2), *supra* and 11 C.F.R. § 110.3(a). NYMEX PAC and COMEX PAC thus would share a single contribution limit, 11 C.F.R. § 100.5(g)(3), and the funds held by NYMEX PAC and COMEX PAC could be freely transferred between NYMEX PAC and COMEX PAC. 11 C.F.R. § 110.3(c).

This result would be virtually identical to the operation of one committee under NYMEX auspices, but would require twice as much administrative effort and expense by NYMEX and twice as much regulatory oversight effort and expense by FEC. In effect, form would be elevated completely over substance with no recognizable benefit to the public. For this reason as well, we urge the Commission to approve the operation of a single committee capable of gathering contributions both from NYMEX solicitable persons (members of NYMEX and the now combined senior staff of the two former exchanges) and COMEX Division Members.

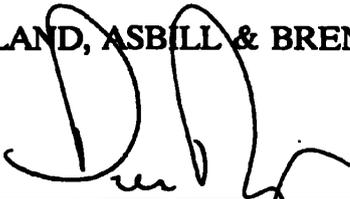
\* \* \*

Your earliest attention to this submission will be appreciated. Please call upon the undersigned if you have any questions or wish additional information.

Very truly yours,

SUTHERLAND, ASBILL & BRENNAN

By: \_\_\_\_\_

  
Peter H. Rodgers  
Gregory L. Wortham

Attorneys for the New York Mercantile Exchange and  
NYMEX Political Action Committee, Inc.

**Federal Election Commission  
NYMEX Advisory Opinion Request  
Page 7**

**cc: Ronald S. Oppenheimer, Esq.  
Executive Vice President and General Counsel  
New York Mercantile Exchange**

**Mark W. Seetin  
Vice President  
Government Affairs  
New York Mercantile Exchange**

Please Note - The entire document of the attached is available in OGC Docket for inspection. It will not be circulated in its entirety due to the volume and limited relevance.

# **NEW YORK MERCANTILE EXCHANGE**

**AND**

# **COMMODITY EXCHANGE, INC.**

---

This Joint Proxy Statement (the "Joint Proxy Statement") is being furnished to individual regular members of record of the New York Mercantile Exchange ("NYMEX") and full members in Commodity Exchange, Inc. ("COMEX") in connection with the solicitation of proxies by the Board of Directors of NYMEX and the Board of Governors of COMEX for use at the respective Special Meetings of the Members of NYMEX and COMEX (including any adjournments or postponements thereof) to be held on April 25, 1994. This Joint Proxy Statement relates to the proposed merger of COMEX Acquisition Corp., a wholly owned subsidiary of NYMEX ("Mergeco"), with and into COMEX, pursuant to the Agreement and Plan of Merger dated January 28, 1994, as amended, among NYMEX, Mergeco and COMEX.

This Joint Proxy Statement is first being distributed to members of NYMEX and COMEX on or about March 26, 1994.

---

**The date of this Joint Proxy Statement is March 26, 1994.**

## TABLE OF CONTENTS

	<u>Page</u>
<b>SPECIAL MEETINGS</b> .....	1
<b>The Merger</b> .....	1
<b>AVAILABLE INFORMATION</b> .....	3
<b>SUMMARY</b> .....	4
<b>CERTAIN CONSIDERATIONS FOR COMEX REGULAR MEMBERS</b> .....	50
<b>RECENT DEVELOPMENT</b> .....	52
<b>HISTORICAL AND PRO FORMA POST-MERGER CAPITALIZATION OF NYMEX</b> .....	53
<b>SELECTED FINANCIAL DATA AND MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</b> ..	54
<b>NYMEX Selected Historical and <i>Pro Forma</i> Financial Information</b> .....	54
<b>Notes to NYMEX's Selected Financial Information</b> .....	55
<b>Management's Discussion and Analysis of Financial Condition and Results of Operations of     NYMEX</b> .....	55
<b>Liquidity</b> .....	56
<b>Expenses</b> .....	56
<b>Capital Expenditures</b> .....	56
<b>COMEX Selected Financial Information</b> .....	57
<b>Notes to COMEX Selected Financial Information</b> .....	57
<b>Management's Discussion and Analysis of Financial Condition and Results of Operations of     COMEX</b> .....	60
<b>Operations</b> .....	60
<b>Liquidity and Capital Resources</b> .....	61
<b>Recent Developments</b> .....	61
<b>MARKET PRICE DATA OF COMEX REGULAR MEMBERSHIPS</b> .....	62
<b>THE SPECIAL MEETINGS</b> .....	63
<b>General</b> .....	63
<b>Matters To Be Considered at the Special Meetings</b> .....	63
<b>Votes Required</b> .....	63
<b>Voting of Proxies</b> .....	64
<b>Revocability of Proxies</b> .....	64
<b>Procedures to Vote by Proxy — NYMEX</b> .....	64
<b>Procedures to Vote by Proxy — COMEX</b> .....	65
<b>Voting and Voting Procedures at the Special Meetings; Record Date</b> .....	67
<b>No Statutory Appraisal Rights</b> .....	67
<b>Certain Expenses</b> .....	67
<b>SPECIAL FACTORS</b> .....	68
<b>Purpose of the Merger</b> .....	68

	<u>Page</u>
Background of the Merger .....	68
Recommendations of the NYMEX Consolidation Committee and the Board of Directors of NYMEX; Fairness of the Merger .....	72
Recommendation of the Board of Governors of COMEX .....	73
Opinions of Financial Advisors .....	76
Certain Projected Financial Information .....	81
Plans for NYMEX Following the Merger .....	82
Plans for COMEX if the Merger is not Approved .....	82
Certain Effects of the Merger .....	83
Interests of Certain Persons in the Merger .....	83
Accounting Treatment .....	84
Regulatory Approval .....	84
Litigation .....	84
 <b>CERTAIN FEDERAL INCOME TAX CONSEQUENCES</b> .....	 86
Tax Consequences to COMEX Regular Members .....	86
Tax Consequences for NYMEX and NYMEX Members .....	89
 <b>MANAGEMENT OF NYMEX, MERGECO AND COMEX</b> .....	 90
 <b>THE MERGER AGREEMENT</b> .....	 91
The Merger .....	91
Merger Consideration .....	93
Special IPO Payments .....	100
Special COMEX Reserve .....	100
Letter of Credit .....	101
Representations and Warranties .....	101
Certain Covenants .....	102
Treatment of COMEX Members and Employees .....	109
Indemnification .....	112
Conditions .....	113
Termination .....	114
Payment Upon Termination .....	115
Exclusive Remedy .....	116
Right of Recovery In Respect of COMEX'S Pre-Consolidation Liabilities; Option Seatholder Claims .....	117
Disputes As To Claims .....	118
Effect of Termination .....	119
Expenses .....	119
Third Party Beneficiaries .....	119
Amendment and Waiver .....	120
 <b>NYMEX SPECIAL DISTRIBUTIONS</b> .....	 120
 <b>UNAUDITED PRO FORMA COMBINED CONDENSED AND COMBINING CONDENSED FINANCIAL STATEMENTS</b> .....	 122
Notes to Pro Forma NYMEX Combined Condensed Financial Statements .....	125
 <b>BUSINESS INFORMATION CONCERNING NYMEX</b> .....	 131

	<b>Page</b>
General . . . . .	131
Contracts Traded on NYMEX . . . . .	132
Futures Contracts Traded on NYMEX . . . . .	133
Options Contracts Traded on NYMEX . . . . .	134
Clearing 21 and Channel 4 <sup>th</sup> . . . . .	134
<b>BUSINESS INFORMATION CONCERNING COMEX . . . . .</b>	<b>136</b>
Contracts Traded on COMEX . . . . .	136
Futures Contracts Traded on COMEX . . . . .	136
Options Contracts Traded on COMEX . . . . .	137
Five-Day Options . . . . .	137
Certain Contracts . . . . .	137
<b>THE NEW COMEX BY-LAWS AND RULES . . . . .</b>	<b>138</b>
General . . . . .	138
The New COMEX By-Laws . . . . .	138
Corporate Governance and Special Voting Rights . . . . .	139
Disciplinary Procedures . . . . .	146
The New COMEX Rules . . . . .	150
Margins and COMEX Division Clearing Matters . . . . .	154
Committees . . . . .	154
New COMEX Trading Privileges . . . . .	157
Dual Trading . . . . .	160
Cross-trading . . . . .	160
Electronic Trading Privileges . . . . .	160
COMEX Division Fees . . . . .	162
Dues and Assessments . . . . .	164
<b>DESCRIPTION OF THE NOTES . . . . .</b>	<b>164</b>
General . . . . .	164
Interest . . . . .	165
Method of Payment . . . . .	165
Redemption . . . . .	165
Payment Account . . . . .	165
Letter of Credit . . . . .	165
Denominations; Exchange; Restrictions on Transfer . . . . .	167
Events of Default, Notice and Waiver . . . . .	167
Amendment, Supplement and Waiver . . . . .	168
Successor to NYMEX . . . . .	168
Certain Covenants of NYMEX . . . . .	169
Note Agent Dealings with NYMEX . . . . .	170
<b>LEGAL MATTERS . . . . .</b>	<b>170</b>
<b>INDEPENDENT ACCOUNTANTS AND AUDITORS . . . . .</b>	<b>170</b>

<b>Annex A</b>	<b>Glossary</b>
<b>Annex B</b>	<b>Agreement and Plan of Merger</b>
<b>Annex C</b>	<b>Form of Amendment No. 1 to Agreement and Plan of Merger</b>
<b>Annex D</b>	<b>Form of Note</b>
<b>Annex E</b>	<b>Opinion of Donaldson, Lufkin &amp; Jenrette Securities Corporation regarding fairness of transaction</b>
<b>Annex F</b>	<b>Opinion of BFM Advisory L.P. regarding fairness of transaction</b>
<b>Annex G</b>	<b>New COMEX By-Laws</b>
<b>Annex H</b>	<b>Management of NYMEX, Mergeco and COMEX</b>
<b>Annex I</b>	<b>Amended and Restated COMEX MRRP</b>
<b>Annex J</b>	<b>Historical Financial Information of NYMEX</b>
<b>Annex K</b>	<b>Historical Financial Information of COMEX</b>
<b>Annex L</b>	<b>Proposed Changes to COMEX Rules</b>
<b>Annex M</b>	<b>Proposed Chapter 3 of NYMEX Rules</b>
<b>Annex N</b>	<b>Report of BFM Advisory, L.P. delivered to the COMEX Board of Governors</b>
<b>Annex O</b>	<b>Form of Letter of Transmittal</b>
<b>Annex P</b>	<b>Schedule 5.18 to the Merger Agreement</b>

## SPECIAL MEETINGS

At the Special Meetings, individual regular members of record of NYMEX (the "NYMEX Members") and owners of record ("COMEX Regular Members") of full memberships in COMEX (the "COMEX Regular Memberships") as of the close of business on the Record Date will consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger dated January 28, 1994 and attached hereto as Annex B, as amended from time to time (the "Merger Agreement"), among COMEX, NYMEX and Mergeco. NYMEX Commercial Associate Members will not be entitled to vote at the NYMEX Special Meeting or to receive any portion of the Special Distributions. Under the terms, and subject to the conditions, of the Merger Agreement, Mergeco will be merged with and into COMEX, which will continue as the surviving corporation ("New COMEX") and become a wholly owned subsidiary of NYMEX. The merger of Mergeco and COMEX provided for in the Merger Agreement is referred to in this Joint Proxy Statement as the "Merger." See "THE SPECIAL MEETINGS — Matters To Be Considered at the Special Meetings" and "— Voting and Voting Procedures at the Special Meetings; Record Date."

### The Merger

If the Merger Agreement is approved and adopted by the NYMEX Members and the COMEX Regular Members and the other applicable conditions to the Merger are satisfied, the Merger will become effective upon the acceptance for filing by the Secretary of State of the State of New York of a duly executed Certificate of Merger (the time the Merger becomes effective is sometimes referred to in this Joint Proxy Statement and the Merger Agreement as the "Effective Time"). The conditions to the Merger include receipt of approval of the Merger by the Commodity Futures Trading Commission (the "CFTC"). It is currently anticipated that the Merger will occur in the summer of 1994.

Under the terms of the Merger Agreement, the COMEX Regular Memberships are deemed to consist of two components: (a) trading privileges (the "Old COMEX Trading Privileges") and (b) equity interests in COMEX (the "Old COMEX Equity Interests").

The Merger will convert the Old COMEX Trading Privileges into the rights and privileges to trade futures, futures option contracts and similar instruments on the new COMEX Division of NYMEX (the "COMEX Division") pursuant to the By-Laws of New COMEX (the "New COMEX By-Laws") and the rules of New COMEX and Chapter 3 of the rules of NYMEX (collectively, the "New COMEX Rules") that will be in effect following the Merger. These new trading privileges are referred to in this Joint Proxy Statement as the "New COMEX Trading Privileges," are summarized under "SUMMARY — Trading Privileges After the Merger" and are described below in detail under "THE NEW COMEX BY-LAWS AND RULES — New COMEX Trading Privileges."

The Merger will convert each Old COMEX Equity Interest into the right to receive a *pro rata* share of:

- (a) Cash in the amount of \$30 million (subject to adjustment based on the "Adjusted Liquid Net Worth" of COMEX immediately prior to the Effective Time of the Merger), which will be payable immediately after the Merger to the COMEX Regular Members immediately prior to the Effective Time. See "THE MERGER AGREEMENT — Merger Consideration — Initial Cash Payment" and "— Merger Consideration — Payment of Initial Cash Payment and Distribution of Notes."

- (b) Cash payments (the "Deferred Cash Payments") in the amount of \$20 million, plus interest, of which \$5 million, plus interest, will be payable by NYMEX on each of the first, second, third and fourth anniversaries of the Merger to the persons who are COMEX Division Regular Members on the respective record dates with respect to those payments. The "record date" is the date (whether or not a business day) that is 10 New York Mercantile Exchange Trading days prior to such payment date. The amount of the Deferred Cash Payments is subject to adjustment. See "THE MERGER AGREEMENT — Merger Consideration — Deferred Payments" and "DESCRIPTION OF THE NOTES."
- (c) Additional cash payments (the "Ticker-Based Payments" and together with the Deferred Cash Payments, the "Deferred Payments") of up to \$20 million (subject to postponement and adjustment in certain circumstances), of which one quarter will be payable on each of the first, second, third and fourth anniversaries of the Merger to the persons who are COMEX Division Regular Members on the respective record dates with respect to those payments. The amount of the Ticker-Based Payments, which will be calculated on an annualized after-tax basis, will be the amount by which the COMEX Division's share of revenues (principally "ticker fees") from Commodities Exchange Center, Inc. ("CEC") between January 1, 1995 and March 31, 1995 exceeds \$18 million (subject to a \$5 million annual cap). The amount of the Ticker-Based Payments, after it has been determined by reference to the amount of the COMEX Division's share of revenues from CEC, is subject to adjustment, and the time of payment is subject to postponement. The Ticker-Based Payments will only bear interest to the extent that an installment is postponed and paid after its due date, pursuant to the terms of the Merger Agreement. See "SUMMARY — Deferred Cash Payments, Ticker-Based Payments and Special IPO Payments," "THE MERGER AGREEMENT — Merger Consideration — Deferred Payments," "— Merger Consideration — Offset" and "DESCRIPTION OF THE NOTES."

The Deferred Payments will be evidenced by NYMEX's Promissory Notes Due 1998 (the "Notes"). NYMEX's obligation to make payments under the Notes will be supported by a letter of credit (the "Letter of Credit") issued by Chemical Bank or another qualified bank (the "LC Issuer"). No Note may be sold separately from the COMEX Division Regular Membership with which the Note is first issued following the Merger and the Note associated with a COMEX Division Regular Membership must be sold with the COMEX Division Regular Membership with which it is associated. See "DESCRIPTION OF THE NOTES."

In addition, if in the future NYMEX participates in a public offering of equity securities for cash (a "NYMEX IPO"), the persons who are COMEX Division Regular Members as of that time will be entitled to receive a *pro rata* share of \$10 million in cash upon the receipt by NYMEX of the proceeds of the first such NYMEX IPO. See "THE MERGER AGREEMENT — Special IPO Payments." NYMEX currently has no plans for a NYMEX IPO, and there is no assurance one will ever occur.

In the Merger, the Old COMEX Equity Interests, which include the right to (i) vote and participate in corporate governance and (ii) receive distributions (including upon liquidation) automatically will be cancelled and cease to exist, and will be replaced by the rights described above and elsewhere in this Joint Proxy Statement.

The COMEX Regular Members at the time of the Merger will become "COMEX Division Regular Members" after the Merger. NYMEX Members at the time of the Merger will become "NYMEX Division Members" after the Merger.

No persons have been authorized to give any information or to make any representation other than those contained in this Joint Proxy Statement and, if given or made, such information or representation must not be relied upon as having been authorized by NYMEX, COMEX or any other person. The delivery of this Joint Proxy Statement shall not, under any circumstances, create an implication that there has been no change in the affairs of NYMEX or COMEX since the date hereof or that the information herein is correct as of any time subsequent to its date.

**THE NOTES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.**

### **AVAILABLE INFORMATION**

This Joint Proxy Statement refers to documents which are not annexed hereto. The schedules to the Merger Agreement which are not annexed hereto, including the Paying Agency Agreement, the Note Agency Agreement and the Letter of Credit, are available to any person to whom this Joint Proxy Statement is delivered, on written or oral request (including a request made in person), without charge, directed to New York Mercantile Exchange, 4 World Trade Center, New York, New York 10048 (Telephone: 212-938-2222), Attention: Department of Membership Services, or directed to Commodity Exchange, Inc., 4 World Trade Center, New York, New York 10048 (Telephone: 212-938-2900), Attention: Office of the Secretary. In order to ensure timely delivery of the documents, any requests should be made by April 15, 1994. The schedules to the Merger Agreement will also be available for inspection at the offices indicated above during regular business hours at any time prior to the Special Meetings. With certain exceptions relating to certain proprietary and/or confidential information, documents referred to in this Joint Proxy Statement that are not annexed hereto or are not schedules to the Merger Agreement are available for inspection at the offices indicated above during regular business hours at any time prior to the Special Meetings.

## SUMMARY

The following is a summary of certain information contained elsewhere in this Joint Proxy Statement and does not purport to be complete. Reference is made to, and this summary is qualified in its entirety by, the more detailed information contained elsewhere in this Joint Proxy Statement and in the Annexes hereto. A Glossary of defined terms used in this Joint Proxy Statement is attached as Annex A. NYMEX Members and COMEX Regular Members are urged to read this Joint Proxy Statement, including the Annexes hereto, in their entirety.

### The Companies

- |   |   |
|---|---|
| <p><b>New York Mercantile Exchange . . . .</b><br/>4 World Trade Center<br/>New York, NY 10048<br/>(212) 938-2222</p>                                 | <p>Organized in 1872, NYMEX is the world's leading exchange for trading energy and platinum-group metals futures and options contracts. NYMEX is the third largest commodity exchange in the United States. Contracts traded on NYMEX include crude oil, heating oil, gasoline, natural gas, propane, platinum and palladium. NYMEX is a not-for-profit, self-regulatory organization that operates under the oversight of the CFTC. There are 816 outstanding memberships in NYMEX that are held by approximately 766 individuals. Contracts traded on NYMEX are cleared through a clearinghouse maintained and operated by NYMEX.</p> |
| <p><b>COMEX Acquisition Corp. . . . .</b><br/>c/o New York Mercantile Exchange<br/>4 World Trade Center<br/>New York, NY 10048<br/>(212) 938-2222</p> | <p>Mergeco is a corporation organized under the New York Not-for-Profit Corporation Law ("NPCL") and is wholly owned by NYMEX. Mergeco has no business other than to merge with and into COMEX in the Merger.</p>   |
| <p><b>Commodity Exchange, Inc. . . . .</b><br/>4 World Trade Center<br/>New York, NY 10048<br/>(212) 938-2900</p>                                     | <p>COMEX is the world's most active precious metals market and is among the most significant commodity futures exchanges in the world. It is the dominant exchange for gold, silver and copper futures and futures options trading and is a designated contract market for additional contracts, including aluminum and Eurotop 100. COMEX is a not-for-profit, self-regulatory organization that operates under the oversight of the CFTC. There are 768 COMEX Regular Memberships presently outstanding. Contracts traded on COMEX are cleared through COMEX Clearing Association, Inc. ("CCA") which is owned by COMEX.</p>          |

### The Special Meetings

- |   |   |
|---|---|
| <p><b>Meetings of Members . . . . .</b></p> | <p>A Special Meeting of NYMEX Members will be held in Board Rooms 1, 2 and 3 of Commodities Exchange Center, Inc. at 4 World Trade Center, 8th Floor, New</p> |
|---|---|

York, New York, on April 25, 1994, at 3:45 p.m., New York time (the "NYMEX Special Meeting").

A Special Meeting of COMEX Regular Members will be held in Board Rooms 4, 5 and 6 of Commodities Exchange Center, Inc. at 4 World Trade Center, 8th Floor, New York, New York, on April 25, 1994, at 3:00 p.m., New York time (the "COMEX Special Meeting," and together with the NYMEX Special Meeting, the "Special Meetings").

See "THE SPECIAL MEETINGS."

Matters to Be Considered  
at the Special Meetings .....

**NYMEX.** At the NYMEX Special Meeting, and any adjournment or adjournments thereof, NYMEX Members will consider and vote upon the approval and adoption of the Merger Agreement providing for the merger of Mergeco with and into COMEX, with COMEX surviving the Merger as a wholly owned subsidiary of NYMEX. NYMEX Members will also consider and vote upon any other matter that may properly come before the meeting.

**COMEX.** At the COMEX Special Meeting, and any adjournment or adjournments thereof, COMEX Regular Members will consider and vote upon the approval and adoption of the Merger Agreement providing for the merger of Mergeco with and into COMEX, with COMEX surviving the Merger as a wholly owned subsidiary of NYMEX. COMEX Regular Members will also consider and vote upon any other matter that may properly come before the meeting.

See "THE SPECIAL MEETINGS."

Votes Required .....

**NYMEX.** The Merger will require approval of the Merger Agreement by the affirmative vote of a majority of NYMEX Members present (in person or by proxy) and voting at the NYMEX Special Meeting. NYMEX Commercial Associate Members will not be entitled to vote at the NYMEX Special Meeting.

**COMEX.** The Merger will require approval and adoption of the Merger Agreement by the affirmative vote of the owners of at least 66% of the COMEX Regular Memberships present (in person or by proxy) and voting at the COMEX Special Meeting provided that affirmative votes are cast with respect to memberships which

constitute not less than a quorum. On the Record Date there were 769 COMEX Regular Memberships outstanding.

Persons who license COMEX Regular Memberships ("COMEX Licensees" and, following the Merger, "COMEX Division Licensees"), member firms of COMEX ("COMEX Member Firms" and, following the Merger, "COMEX Division Member Firms"), holders ("Option Seatholders") of privileges to trade certain futures option contracts and aluminum futures contracts ("Option Seats") on COMEX and holders ("Aluminum Seatholders") of privileges to trade aluminum futures and aluminum futures option contracts ("Aluminum Seats") on COMEX are not entitled to vote on the Merger. COMEX Division Regular Members, COMEX Division Licensees, COMEX Division Member Firms, Option Seatholders and Aluminum Seatholders are collectively referred to in this Joint Proxy Statement as "COMEX Division Members."

See "THE SPECIAL MEETINGS."

Record Date .....

The record date for the NYMEX Special Meeting and the COMEX Special Meeting is March 25, 1994.

See "THE SPECIAL MEETINGS."

**The Merger**

General .....

Mergeco, a wholly owned subsidiary of NYMEX, will be merged with and into COMEX, with COMEX surviving the Merger as a wholly owned subsidiary of NYMEX ("New COMEX"). Following the Merger, the trading activities currently engaged in on COMEX will be conducted on a division of the New York Mercantile Exchange to be known as the COMEX Division of NYMEX (the "COMEX Division").

New COMEX subsequently may be merged with and into or liquidated or dissolved into (i) NYMEX (the "Second Stage Merger") or (ii) any subsidiary of NYMEX (in corporate, partnership, limited partnership or any other form), in connection with a conversion of New COMEX to "for-profit" status or any other *bona fide* corporate purpose, subject in each case to satisfaction of certain tax-related conditions and to the satisfaction of certain additional conditions intended to protect the trading

privileges and certain other rights of the COMEX Division Members.

See "THE MERGER AGREEMENT."

**Effect of Merger on COMEX**

**Regular Members . . . . .**

**Trading Privileges . . . . .**

**Initial Cash Payments . . . . .**

**In the Merger, COMEX Regular Members will:**

- Retain the right to trade the gold, silver, copper and Eurotop 100 contracts that are traded on COMEX at the time of the Merger and COMEX Division Replacement Contracts (as that term is defined below).
- Obtain additional trading privileges, including certain limited trading rights in New Energy Contracts, New Products Contracts and Platinum/Palladium Contracts and the right to trade on NYMEX ACCESS™ (as those terms are defined below). See "SUMMARY — New COMEX Trading Privileges" and "THE NEW COMEX BY-LAWS AND RULES — New COMEX Trading Privileges."
- Receive an initial cash payment (the "Initial Cash Payment"), due promptly after the Merger, equal to \$30 million (approximately \$39,063 per COMEX Regular Membership before tax, assuming that 768 COMEX Regular Memberships are outstanding at the time of the Merger), subject to upward or downward adjustment based on the extent to which the estimate of the "Adjusted Liquid Net Worth" of COMEX at the time of the Merger (*i.e.*, the excess of COMEX's cash, cash equivalents and receivables over its liabilities and reserves) is more or less than \$15 million. The final determination of the Adjusted Liquid Net Worth of COMEX is to be established by audit no later than 30 days prior to the first anniversary of the Merger, subject to the right of the COMEX Governors Committee to review such audit. See "THE MERGER AGREEMENT — Merger Consideration."

Based on COMEX's audited balance sheet at November 30, 1993, if the adjustment had been performed on that date, the \$30 million would have been increased by approximately \$3.1 million to \$33.1 million. There can be no assurances as to the amount of the actual adjustment, if any.

If directed by COMEX in writing not later than five New York Mercantile Exchange trading days before the time of the Merger, a total of \$500,000 (the "Special COMEX Reserve") will be withheld from the Initial Cash Payment and held by The Bank of New York (the "Paying Agent"). In that event, the Special COMEX Reserve will be available solely to pay the costs and expenses incurred to enforce the rights of COMEX Division Regular Members under the Merger Agreement. The COMEX Special Reserve will be distributed to the persons who, at the time of such distribution, are COMEX Division Regular Members upon the request of the Chairman or the Vice Chairman of the COMEX Governors Committee if such request is supported by a vote of a majority of the COMEX Division Regular Members voting at a meeting to approve such distribution. See "THE MERGER AGREEMENT — Special COMEX Reserve."

*Notes* .....

- Receive Notes issued by NYMEX evidencing the obligation of NYMEX to make the Deferred Cash Payments and Ticker-Based Payments described below. The Notes will be supported by an irrevocable letter of credit (the "Letter of Credit") issued by Chemical Bank or another qualified bank (the "LC Issuer") in favor of the Note Agent on behalf of the holders of Notes. For a further discussion of the Notes and the Letter of Credit, see "THE MERGER AGREEMENT — The Merger" and "DESCRIPTION OF THE NOTES."

**Deferred Cash Payments, Ticker-Based Payments and Special IPO Payments** .....

The payments described below will be made after the Merger to the persons who are COMEX Division Regular Members on the applicable record date:

*Deferred Cash Payments* .....

- Deferred Cash Payments equal to \$20 million plus interest, payable in installments of \$5 million each, plus interest, on the first, second, third and fourth anniversaries of the Merger (approximately \$26,042 plus interest per COMEX Division Regular Membership, to be paid in four equal installments of approximately \$6,510 (plus interest) each over four years, assuming that 768 COMEX Regular Memberships are outstanding at the time of the Merger), subject to reduction in certain circumstances (e.g., to reflect the final audited computation of the

Adjusted Liquid Net Worth of COMEX as of the time of the Merger, to the extent an adjustment in favor of NYMEX is required). See "THE MERGER AGREEMENT — Merger Consideration."

*Ticker-Based Payments . . . . .*

- Ticker-Based Payments of up to \$20 million, payable in installments of up to \$5 million each on the first, second, third and fourth anniversaries of the Merger, subject to adjustment and postponement as described below. The amount of the Ticker-Based Payments, if any, which will be calculated on an after-tax basis, will depend on the extent to which the COMEX Division's annualized share of revenues from CEC (principally "ticker fees") during the period between January 1, 1995 and March 31, 1995 exceeds \$18 million. Such "ticker fees" are derived from the sale to subscribers of real time price data of the trading of contracts on COMEX (or after the Merger, on the COMEX Division). Assuming that the level of CEC Revenue during January 1994, adjusted to a three-month period, is equal to the amount of CEC Revenue during January, February and March 1995, the aggregate amount of the Ticker-Based Payments, assuming a 46% tax rate, would be approximately \$4 million, or \$1 million per year.

NYMEX is obligated to defer any Ticker-Based Payment until final resolution of any investigation, claim or lawsuit involving COMEX and any of the Option Seatholders which relates to either the Merger Agreement or the Merger (an "Option Seatholder Claim"). NYMEX can also elect to deduct from the Ticker-Based Payments losses, liabilities, damages and expenses (based on a final judgment or settlement) incurred in connection with Option Seatholder Claims. As to the only lawsuit which has been filed to date asserting any Option Seatholder Claims, COMEX and the members of its Board of Governors and NYMEX and its Board of Directors believe such suit is without merit and intend to vigorously contest such Claims. NYMEX is not permitted to defer any Initial Cash Payments or Deferred Cash Payments pending resolution (and notwithstanding the pendency) of any Option Seatholder Claims, and NYMEX may not deduct from the Initial Cash Payments or Deferred Cash Payments any sums incurred in connection with such Claims. If any Ticker-Based Payments are deferred, interest at Chemical Bank's prime rate (but

in no event greater than 12%) will be credited on the amount which is deferred for up to a maximum of six years after the first due date of a deferred payment which follows the commencement of an Option Seatholder Claim.

**Special IPO Payments . . . . .**

- COMEX Division Regular Members as of the effective date of the first registration statement filed after the Merger with respect to a NYMEX IPO (as defined below) will be entitled to receive possible special payments (the "Special IPO Payments") equal to \$10 million in cash, contingent upon the receipt by NYMEX of the proceeds of the NYMEX IPO. The Special IPO Payments will be distributed among the record owners of COMEX Division Regular Memberships, *pro rata*, based on 772 COMEX Division Regular Memberships outstanding, whether or not all of such memberships are in fact outstanding. The amount per membership of the Special IPO Payment, if any is ever made, would be \$12,953. Accordingly, unless all 772 COMEX Division Regular Members are outstanding, the total amount of the Special IPO Payments will be less than \$10 million. "NYMEX IPO" means a public offering of equity securities for cash pursuant to a registration statement filed under the Securities Act of 1933 (the "Securities Act") by NYMEX, any holding company which holds a controlling interest in NYMEX, or any other entity which owns or operates all or substantially all of the business or assets which are owned by NYMEX immediately following the Merger. NYMEX currently has no plans to conduct a NYMEX IPO, and there is no assurance that one will ever occur.

**Pre-Consolidation Liabilities,  
Option Seatholder Losses  
and Dispute Expenses . . . . .**

NYMEX can elect to require owners of COMEX Division Regular Memberships, COMEX Division Member Firms and COMEX Division Licensees to make payments through increased fees to reimburse NYMEX for — in the event there are any — (i) losses, liabilities, expenses or damages (including legal expenses) with respect to any unlawful, wrongful or negligent behavior of COMEX prior to the Merger ("Pre-Consolidation Liabilities") which exceed \$5 million, (ii) losses, liabilities, damages and expenses (including legal fees) ("Option Seatholder Losses") incurred in connection with Option Seatholder Claims (to the extent that unpaid Ticker-Based Payments

are insufficient to cover such Option Seatholder Claims), notwithstanding COMEX's and its Board of Governors' position that such Claims are without merit and (iii) costs and expenses, including attorneys' fees, incurred in connection with any dispute arising under the Merger Agreement as to which NYMEX prevails ("Dispute Expenses"), or NYMEX may recover Pre-Consolidation Liabilities, Option Seatholder Losses or Dispute Expenses — in the event there are any — through dues on COMEX Division Regular Members, subject to the right of the COMEX Governors Committee to determine whether such amounts should, instead of fees, be recovered through assessments on COMEX Division Regular Members.

See "THE MERGER AGREEMENT — Merger Consideration."

Participation in Corporate  
Governance; Dividends . . . . .

Following the Merger, the COMEX Division Regular Members will not have the right to vote and participate in NYMEX's corporate governance, or to receive dividends or distributions, including upon liquidation. As described below, limited rights to participate in the governance of the COMEX Division will be retained by holders of the New COMEX Trading Privileges. In addition, the COMEX Governors Committee will represent COMEX Division Members substantially in an advisory capacity. See "THE NEW COMEX BY-LAWS AND RULES — Corporate Governance and Special Voting Rights."

Recipients of Merger  
Consideration . . . . .

COMEX Regular Members at the time of the Merger will be entitled to receive the Initial Cash Payments and the Notes. To receive the Initial Cash Payment and the Notes, the COMEX Regular Members must execute a Letter of Transmittal, accepting the terms of the Merger Agreement, New COMEX By-Laws and New COMEX Rules. A COMEX Division Regular Member may not transfer or assign the right to receive the Initial Cash Payment even if he transfers his COMEX Division Regular Membership.

See "DESCRIPTION OF THE NOTES — Denominations; Exchange; Restrictions on Transfer."

**Effect of Merger  
on COMEX Member Firms  
and COMEX Licensees . . . . .**

COMEX Member Firms and COMEX Licensees are not eligible to receive the Initial Cash Payment, the Deferred Payments or any Special IPO Payment. COMEX Division Member Firms and COMEX Division Licensees will, to the extent NYMEX so elects, be required to contribute to the reimbursement of NYMEX for Pre-Consolidation Liabilities in excess of \$5 million, for Option Seatholder Losses (to the extent that unpaired Ticker-Based Payments are insufficient to cover such Option Seatholder Losses) in the event that there are any such Option Seatholder Losses, and Dispute Expenses through increases in fees, subject to the right of the COMEX Governors Committee to determine whether such amounts should, instead of fees, be recovered through assessments on COMEX Division Regulatory Members. The status of COMEX Member Firms and COMEX Licensees will not change as a result of the Merger and their existing trading privileges will be substantially unchanged. COMEX Division Member Firms and COMEX Division Licensees will be entitled to exercise the trading privileges described below under "— New COMEX Trading Privileges — Trading Privileges of COMEX Division Member Firms" and "— New COMEX Trading Privileges — Trading Privileges of COMEX Division Licensees."

**Effect of Merger on  
Option Seatholders and  
Aluminum Seatholders . . . . .**

Option Seatholders and Aluminum Seatholders are not eligible to receive the Initial Cash Payment, the Deferred Payments or any Special IPO Payment. Option Seatholders and Aluminum Seatholders will not be subject to dues, fees or assessments imposed in respect of any Pre-Consolidation Liabilities, Option Seatholder Losses (if any) or Dispute Expenses. Following the Merger, Option Seatholders and Aluminum Seatholders will be entitled to trade on the COMEX Division, to the extent that, from time to time, such contracts are listed for trading, the same contracts that they are entitled to trade on COMEX immediately prior to the Merger. Although NYMEX has stated that, following the Merger, it intends to explore the possibility of listing COMEX Division futures options contracts on NYMEX ACCESS<sup>SM</sup>, it is not obligated to do so. If any of the futures options contracts that Option Seatholders currently trade are listed on NYMEX ACCESS<sup>SM</sup> in the future, NYMEX will take all steps

reasonably necessary to allow those contracts to be traded on NYMEX ACCESS™ by COMEX Division Regular Members and Option Seatholders.

Letter of Transmittal .....

Promptly after the Paying Agent receives the Initial Cash Payment and the Notes, the Paying Agent will provide each person who was a COMEX Regular Member immediately prior to the Merger (the "Record Date") a form of letter of transmittal.

Each COMEX Regular Member will be required to execute and deliver a letter of transmittal in the form attached hereto as Annex O in order to receive its *pro rata* share of the Initial Cash Payment and the Notes. A member's *pro rata* share will be determined by multiplying the Initial Cash Payment and the aggregate principal amount of the Notes, respectively, by a fraction the numerator of which is the number of COMEX Regular Memberships owned by the COMEX Regular Member, including memberships registered by means of an ABC Agreement, and the denominator of which is the aggregate number of COMEX Regular Memberships outstanding at the time of the Merger. By executing and delivering a letter of transmittal, a COMEX Regular Member will be agreeing to be bound by the terms of the Merger Agreement, the New COMEX By-Laws and the New COMEX Rules. See "THE MERGER AGREEMENT — Merger Consideration — Payment of Initial Cash Payment and Distribution of Notes."

Effective Time .....

The Merger will become effective at the date and time of acceptance for filing by the Secretary of State of the State of New York of a duly executed certificate of merger (the "Certificate of Merger") in accordance with the provisions of Section 905 of the NPCL (the "Effective Time"). It is currently anticipated that the Certificate of Merger will be filed during the summer of 1994. This filing will be made, however, only upon satisfaction or waiver of the conditions contained in the Merger Agreement. See "THE MERGER AGREEMENT."

Resale Restrictions .....

Following the Merger, there will be no restrictions on the transfer of a COMEX Division Regular Membership other than as provided in the New COMEX Rules and the New COMEX By-Laws. In addition, the Notes are exempt from registration under federal and, based on information provided to COMEX by COMEX Regular Members as to their addresses on the date of this Joint

Proxy Statement, state securities laws. No Note may be sold separately from the COMEX Division Regular Membership with which the Note is first issued following the Merger, and the Note associated with a COMEX Division Regular Membership must be sold with the COMEX Division Regular Membership with which it is associated.

See "DESCRIPTION OF THE NOTES — Denominations; Exchange; Restrictions on Transfer."

**Trading Privileges  
After the Merger**

- General** ..... The New COMEX Trading Privileges, which include the rights and privileges described below, are those rights and privileges that are set forth in the Merger Agreement, the New COMEX By-Laws and the New COMEX Rules.
- Definitions** ..... "New Metals Contract" means any contract approved for trading after the date of the Merger on any part of NYMEX (including the COMEX Division or the NYMEX Division), other than COMEX Division Replacement Contracts, for which the underlying commodity is one or more metals or alloys (e.g., a metals index futures contract), other than Platinum/Palladium Contracts. New Metals Contracts include contracts in aluminum.
- "Platinum/Palladium Contract" means a contract for which the underlying commodity is platinum, palladium or an alloy containing one or more of those metals.
- "New Energy Contract" means a contract for which the underlying commodity is a hydrocarbon, fossil fuel or other energy source derived from another energy source.
- "Replacement Contract" means a contract introduced as a replacement for another contract previously traded on any part of NYMEX.
- "COMEX Division Replacement Contract" means a contract introduced as a replacement for any gold, silver, copper or Eurotop 100 contract.
- "New Product Contract" means a contract approved for trading after the date of the Merger which is not a New

**Energy Contract, Replacement Contract or New Metals Contract.**

**"Proprietary Trading" means trading cleared in an individual member's own account.**

**Trading Privileges of COMEX  
Division Regular Members . . . . .**

**COMEX Division Regular Members will have the following trading privileges following the Merger:**

- **Trading in gold, silver, copper and Eurotop 100 futures and options contracts that are traded on COMEX at the time of the Merger and any COMEX Division Replacement Contracts, including trading such contracts through NYMEX ACCESS<sup>SM</sup> if such contracts are listed thereon for trading.**
- **Trading in all New Metals Contracts, including trading such contracts through NYMEX ACCESS<sup>SM</sup> if such contracts are listed thereon for trading.**
- **Proprietary Trading for an unlimited period of time in each New Product Contract approved for trading on any part of NYMEX after the Merger, including trading such contracts through NYMEX ACCESS<sup>SM</sup> if such contracts are listed thereon for trading. This privilege is non-transferable and will be available as to any particular contract only to a COMEX Division Regular Member who owned his COMEX Division Regular Membership on the date six months prior to the date trading in that contract commences, and will continue as to that contract only for so long as that COMEX Division Regular Member continues to own that specific COMEX Division Regular Membership.**
- **Trading on NYMEX ACCESS<sup>SM</sup> those contracts which COMEX Division Regular Members trade on the floor of the COMEX Division (to the extent such contracts are listed on NYMEX ACCESS<sup>SM</sup>). NYMEX has committed to take all steps reasonably necessary to list the COMEX Division gold, silver and copper futures contracts on NYMEX ACCESS<sup>SM</sup>. NYMEX also has agreed that if and when options contracts traded on COMEX immediately prior to the Merger are listed on NYMEX ACCESS<sup>SM</sup>, NYMEX will take all steps reasonably necessary to allow COMEX Division Regular Members to trade such contracts.**

- **Proprietary Trading, for a period of two years (unless extended by the Board of Directors of New COMEX in its sole discretion) after the date such contract commences trading on the Exchange, in each New Energy Contract approved for trading on any part of NYMEX after the Merger, including on NYMEX ACCESS™. For this purpose, however, New Energy Contracts do not include Replacement Contracts.**
- **Trading, for a period of two years after the date the contract commences trading on NYMEX, in each New Product Contract approved for trading on any part of NYMEX after the Merger, including on NYMEX ACCESS™, regardless of whether permit programs on such contract are implemented.**
- **Proprietary Trading in Platinum/Palladium Contracts, including trading through NYMEX ACCESS™ if such contracts are listed thereon for trading, for an unlimited period of time.**
- **Proprietary Trading, until five years after the Merger, of all contracts traded on the floor of the NYMEX Division that are listed on NYMEX ACCESS™. This five-year limitation is not applicable to New Energy Contracts, New Product Contracts and Platinum/Palladium Contracts, which are, in certain instances, subject to their own time limitations as set forth herein.**

**Trading Privileges of COMEX  
Division Member Firms . . . . .**

**COMEX Division Member Firms will have the following trading privileges following the Merger:**

- **Trading in gold, silver, copper and Eurotop 100 contracts that are traded on COMEX at the time of the Merger and any COMEX Division Replacement Contracts including trading, through NYMEX ACCESS™ if such contracts are listed thereon for trading.**
- **Trading in all New Metals Contracts including trading through NYMEX ACCESS™ if such contracts are listed thereon for trading.**
- **Trading, for a period of two years after the date the contract commences trading on NYMEX, in each New Product Contract approved for trading on any part of NYMEX after the Merger, including trading through**

**NYMEX ACCESS™ if such contracts are listed thereon for trading, regardless of whether permit programs on such contract are implemented.**

- **Trading on NYMEX ACCESS™ those contracts which COMEX Division Member Firms trade on the floor of the Exchange (to the extent such contracts are listed on NYMEX ACCESS™). NYMEX has committed to take all steps reasonably necessary to list the COMEX Division gold, silver and copper futures contracts on NYMEX ACCESS™. NYMEX also has agreed that if and when options contracts traded on COMEX immediately prior to the Merger are listed on NYMEX ACCESS™, NYMEX will take all steps reasonably necessary to allow COMEX Division Member Firms to trade such contracts.**

**Trading Privileges of COMEX**

**Division Licensees . . . . .**

**COMEX Division Licensees will have the following trading privileges following the Merger:**

- **Trading in gold, silver, copper and Eurotop 100 futures and options contracts that are traded on COMEX at the time of the Merger and COMEX Division Replacement Contracts.**
- **Trading in all New Metals Contracts.**
- **Trading COMEX Division products on NYMEX ACCESS™ if such electronic trading privileges are licensed pursuant to a specific agreement.**

**Possible Additional COMEX  
Division Trading Privileges  
in Any Future Merger . . . . .**

**If NYMEX acquires, merges or consolidates with another entity in a transaction in which NYMEX Division Members acquire trading privileges, COMEX Division Regular Members, COMEX Division Licensees and COMEX Division Member Firms will acquire additional trading privileges in the contracts of such other entity to the same extent that they would acquire such trading privileges if the contracts had been originally developed by NYMEX.**

**See "THE NEW COMEX BY-LAWS AND RULES."**

**Additional Trading Privileges of  
Individual Owners of NYMEX  
Division Memberships . . . . .**

Persons who trade on the NYMEX Division of NYMEX (the "NYMEX Division") following the Merger will retain their existing NYMEX trading privileges and their rights to trade New Energy Contracts and New Products Contracts and NYMEX Division Regular Members who are natural persons (and not those who lease or license memberships) will receive the following additional privileges:

- Proprietary Trading in Eurotop 100 futures contracts and futures options contracts, including trading such contracts through NYMEX ACCESS<sup>SM</sup> if such contracts are listed thereon for trading.
- Proprietary Trading in New Metals Contracts, including trading such contracts through NYMEX ACCESS<sup>SM</sup> if such contracts are listed thereon for trading.
- Proprietary Trading until five years after the Merger of COMEX Division contracts traded on NYMEX ACCESS<sup>SM</sup>. This five-year limitation is not applicable to Eurotop 100 contracts and New Metals Contracts.

Except as described above, NYMEX Division Members will not have the right following the Merger to trade the contracts currently traded on COMEX.

**Electronic Trading Privileges . . . . .**

NYMEX ACCESS<sup>SM</sup> is an after-hours electronic trading system. References herein to NYMEX ACCESS<sup>SM</sup> are to the NYMEX ACCESS<sup>SM</sup> System or any other after-hours electronic trading system through which NYMEX Division contracts are traded. NYMEX ACCESS<sup>SM</sup> presently permits the trading of futures and options contracts in crude oil, heating oil, New York Harbor unleaded gasoline and platinum.

NYMEX has agreed in the Merger Agreement that following the Merger, it will take all steps reasonably necessary to cause gold, silver and copper futures contracts that are traded on the COMEX Division to be listed on NYMEX ACCESS<sup>SM</sup> and to allow such contracts to be traded on NYMEX ACCESS<sup>SM</sup> by COMEX Division Regular Members and COMEX Division Member Firms. There is no prohibition on NYMEX listing Eurotop 100 futures or options for trading on NYMEX ACCESS<sup>SM</sup>.

**NYMEX also has agreed that if and when options contracts that are traded on COMEX before the Merger are listed on NYMEX ACCESS<sup>SM</sup>, NYMEX will take all steps reasonably necessary to allow such contracts to be traded on NYMEX ACCESS<sup>SM</sup> by COMEX Division Regular Members, COMEX Division Member Firms and Option Seatholders. However, NYMEX is not obligated to list any of these options contracts on NYMEX ACCESS<sup>SM</sup>.**

**COMEX Division Regular Members will be granted "electronic trading privileges" on terms substantially similar to those applicable to NYMEX Division Members as set forth in Chapter 11 of the NYMEX Rules. Pursuant to those rules, COMEX Division Regular Members will be permitted to use those electronic trading privileges to become qualified (i.e., satisfying certain training, guaranty and other documentation requirements) to trade on NYMEX ACCESS<sup>SM</sup> or, alternatively, may lease electronic trading privileges in COMEX Division products to another person. COMEX Division Member Firms also will be granted rights to trade on NYMEX ACCESS<sup>SM</sup> those contracts which they may trade on the floor of the Exchange, to the extent those contracts are listed on NYMEX ACCESS<sup>SM</sup>.**

**Any action to delist a gold, silver or copper contract from NYMEX ACCESS<sup>SM</sup> is a Special Matter unless either (i) trading in such contract has averaged less than 10 contracts per day for the past six months or (ii) all trading of NYMEX Division contracts on NYMEX ACCESS<sup>SM</sup> is terminated. However, if after any such delisting of all NYMEX Division contracts from NYMEX ACCESS<sup>SM</sup> any contract traded on the NYMEX Division is thereafter listed for trading on NYMEX ACCESS<sup>SM</sup>, then the gold, silver and copper contracts, to the extent listed for trading on NYMEX ACCESS<sup>SM</sup> at the time all trading on NYMEX ACCESS<sup>SM</sup> stopped, will be relisted for trading on NYMEX ACCESS<sup>SM</sup>.**

**Until the fifth anniversary of the Merger, COMEX Division Regular Members will also be entitled to conduct Proprietary Trading through NYMEX ACCESS<sup>SM</sup> of all contracts that are traded on the NYMEX Division, and owners of NYMEX Division regular memberships who are natural persons will be entitled to conduct Proprietary Trading through NYMEX ACCESS<sup>SM</sup> of all contracts that are traded on the COMEX Division (such rights are**

collectively referred to as "NYMEX ACCESS<sup>SM</sup> Cross-Trading Privileges").

The NYMEX ACCESS<sup>SM</sup> Cross-Trading Privileges will terminate on the fifth anniversary of the Merger unless extended by agreement. See "THE NEW COMEX BY-LAWS AND RULES — Electronic Trading Privileges."

Transaction and clearing fees for NYMEX ACCESS<sup>SM</sup> Cross-Trading Privileges will be amounts established from time to time by the Board of Directors of New COMEX and equal to (A) the mean between the lowest such fees charged to owners of COMEX Division Regular Memberships and the highest rates charged to non-members for contracts traded on the COMEX Division, plus (B) the same NYMEX ACCESS<sup>SM</sup> fees charged to NYMEX Division Members.

NYMEX ACCESS<sup>SM</sup> fees for owners of COMEX Division Regular Memberships trading on NYMEX ACCESS<sup>SM</sup> (other than for NYMEX ACCESS<sup>SM</sup> Cross-Trading Privileges as described above) shall be equal to (i) the clearing and transaction fees established by the Board of Directors of New COMEX that would apply to the trade if it were made on the floor of the COMEX Division plus (ii) a NYMEX ACCESS<sup>SM</sup> fee equal to the NYMEX ACCESS<sup>SM</sup> fee charged to NYMEX Division Members for trading NYMEX Division contracts on NYMEX ACCESS<sup>SM</sup>.

The exercise of electronic trading privileges and all trading on NYMEX ACCESS<sup>SM</sup> will be subject to NYMEX's rules for electronic trading. These rules will be Term Sheet Divergence Rules. See "THE NEW COMEX BY-LAWS AND RULES — The New COMEX Rules." There will be no trading of a COMEX Division contract on NYMEX ACCESS<sup>SM</sup> during the trading hours that such contract is traded by open outcry on the COMEX Division floor.

**Floor Reconfiguration . . . . .**

NYMEX has agreed that if it relocates its headquarters and trading operations, the COMEX Division will be relocated to the same site. The facilities of the COMEX Division will be substantially similar to the NYMEX Division's facilities. NYMEX has also agreed that it will not make any changes in the floor space of the COMEX Division at 4 World Trade Center ("4 WTC") to accommodate any of NYMEX's existing products, other

than platinum or palladium. After the Merger, NYMEX may move trading in Platinum/Palladium Contracts and any new contracts which commence trading after the Merger into the existing COMEX Division quadrant. Notwithstanding the foregoing, NYMEX has agreed that it will not reconfigure the existing floor space of the COMEX Division at 4 World Trade Center if such reconfiguration would impair the ability of COMEX Division Regular Members to conduct their business substantially as they do now. The Merger Agreement provides that in the event that NYMEX seeks to reallocate any booth or reconfigure the floor, in the COMEX trading floor space at 4 WTC, it will give no less than two weeks prior notice to the COMEX Governors Committee. Under the Merger Agreement, there is a dispute resolution process available to any COMEX Division Regular Member who believes that such reallocation or reconfiguration impairs its ability to conduct business in a manner substantially the same as that to which it is accustomed. See "THE MERGER AGREEMENT — Certain Covenants — Headquarters; Floor Configurations." NYMEX has indicated an intention to examine whether certain booths in the COMEX quadrant at the existing 4 World Trade Center facility should be reallocated to NYMEX Members to service the ring in which natural gas futures contracts are traded.

**Dual Trading** .....

Following the Merger, COMEX Division Regular Members, to the extent permitted by law, can continue dual trading contracts traded on the COMEX Division on terms no more restrictive than those imposed for contracts traded on the NYMEX Division. The Board of New COMEX has agreed not to change the COMEX Division trade data entry system to the system used for the NYMEX Division if that change would significantly impair dual trading privileges on COMEX Division contracts.

**COMEX Division Financial Requirements** .....

Following the Merger there will continue to be no minimum financial requirements for COMEX Division Regular Members and the financial requirements applicable to COMEX Division Licensees, COMEX Division Member Firms, Option Seatholders and Aluminum Seatholders will not change.

However, COMEX Rule 7.03 will be amended to provide that (i) a COMEX Division guarantor that maintains \$2 million of working capital or, if a futures commission merchant ("FCM"), \$2 million of adjusted net capital, will be permitted to guarantee 24, instead of 20, individuals without maintaining additional capital, and (ii) that the requirement for a guarantor to maintain additional capital for each guarantee in excess of 24 will be waived if the individual to be guaranteed maintains the greater of \$50,000 or 50% of the value of a COMEX Division Membership (as opposed to a \$50,000 requirement).

Changes to the financial requirements may be made only if NYMEX complies with certain procedures in the New COMEX Rules. See "THE NEW COMEX BY-LAWS AND RULES — Corporate Governance and Special Voting Rights — Special Voting Rights."

**Clearing and Trade  
Processing Matters . . . . .**

*Clearing and Trade Processing.* Following the Merger, NYMEX will undertake to integrate the clearing and trade processing operations of COMEX into NYMEX as soon as reasonably practicable. NYMEX will take all steps reasonably practicable to make financial requirements uniform for clearing member firms. As is currently required to become a clearing member, two COMEX Division Regular Memberships will be required to clear contracts traded on the COMEX Division. Likewise, to become a clearing member authorized to clear contracts traded on the NYMEX Division, two NYMEX Division Memberships will be required. To become authorized to clear contracts which are neither New Metals nor New Energy Contracts, two COMEX Division Regular Memberships and two NYMEX Division Memberships will be required.

*Clearing Member Liability and Guaranty Funds.* Although NYMEX presently intends to maintain separate guaranty funds for the COMEX Division and the NYMEX Division, it is not obligated to do so. NYMEX has agreed to use its reasonable best efforts to ensure that the liability of clearing member firms in connection with potential assessments on defaults will be assessed on a commodity-by-commodity basis, pursuant to the formula set forth in Schedule 5.18 to the Merger Agreement, a copy of which is attached hereto as Annex P, which prescribes that assessments be made on the basis of

futures and futures equivalents volume cleared and held as month-end open interest by each clearing member.

**Margins.** NYMEX intends to employ a gross margining system for contracts traded on the COMEX Division, but is not obligated to do so. NYMEX also intends to explore development of a system to net the pays and collects of each clearing member that is a clearing member of both the NYMEX and COMEX Divisions, but NYMEX is not obligated to do so.

**Trade Processing.** Except as otherwise provided in the New COMEX By-Laws and the New COMEX Rules, NYMEX is not prohibited from converting the COMEX Division audit trail system to the pit card system or any other system whatsoever unless the change would significantly impair dual trading privileges. See "— Dual Trading" above.

See "THE MERGER AGREEMENT — Certain Covenants — Clearing and Trade Processing Matters."

**Sale of the COMEX Division  
by NYMEX . . . . .**

NYMEX currently has no plans to sell NYMEX or substantially all of NYMEX; however, the Merger Agreement contains provisions designed to protect COMEX Division Members if any such sale were to occur. The Merger Agreement prohibits NYMEX from entering into or effecting any transaction involving, among other things, the sale or transfer of the COMEX Division or the NYMEX Division, unless they are both sold or transferred together. In the event of a sale or transfer, the Merger Agreement requires NYMEX to provide for the continuation of the protections in Section 205(D) of the NEW COMEX By-Laws (which provides, among other things, for voting on Special Matters, as described below). See "THE MERGER AGREEMENT — Certain Covenants — Mergers, Sale of Assets, etc."

**Fiduciary Duty of NYMEX and New  
COMEX Directors and Officers  
to Owners of COMEX Division  
Regular Memberships . . . . .**

The directors and officers of NYMEX and New COMEX are required to act as fiduciaries with respect to the owners of COMEX Division Regular Memberships, including in connection with a merger, reorganization, financing or other extraordinary transaction involving New COMEX or NYMEX. However, this fiduciary duty

will not (i) require NYMEX to extend the time periods for COMEX Division Regular Members' trading privileges which are limited to specific periods, (ii) prohibit NYMEX or New COMEX from entering into any transaction which does not alter or diminish the contractual rights of COMEX Division Regular Members under the New COMEX By-Laws, New COMEX Rules, Merger Agreement, Notes or Note Agency Agreement or (iii) prevent the liquidation or winding up of New COMEX if the aggregate amount of Pre-Consolidation Liabilities exceeds the Merger Consideration paid by NYMEX.

See "THE MERGER AGREEMENT — The Merger."

**COMEX Division Fees . . . . .**

Following the Merger, NYMEX (acting through the Board of Directors of New COMEX) will establish all fees with respect to the COMEX Division subject to the limitations listed below:

*Post Merger Fees Adjustment.* Following the Merger, all fees (including without limitation transaction and clearing fees) for COMEX Division Members for transactions on the COMEX Division, other than fees for "exchange for physicals" transactions ("EFP Transactions") and "transfers of open positions" ("Ex-pit Transactions"), and COMEX Division Licensees will be adjusted to the fees charged by NYMEX on January 28, 1994. These new fees are set forth below under "THE NEW COMEX BY-LAWS AND RULES — COMEX Division Fees."

*COMEX Division Regular Member Fee Cap.* Fees charged to owners of COMEX Division Regular Memberships, other than fees for EFP Transactions and Ex-pit Transactions, cannot be increased above the levels in effect immediately following the Merger (the "Benchmark") for 10 years following the Merger, except to recover Pre-Consolidation Liabilities, Option Seatholder Losses and Dispute Expenses. After the tenth anniversary, fees charged to owners of COMEX Division Regular Memberships may be increased above the Benchmark, to an amount equal to the fees then charged to owners of NYMEX Division memberships.

*COMEX Division Licensee Fee Cap.* Until the tenth anniversary of the Merger, fees charged to COMEX Division Licensees may not be increased above or decreased below the Licensee Benchmark, except in

connection with the recovery of Pre-Consolidation Liabilities, Option Seatholder Losses and Dispute Expenses. After the tenth anniversary, no limitation will apply. "Licensee Benchmark" means the Benchmark plus the surcharge(s) for licensee transactions set forth in the New COMEX Rules.

***EFP Transactions.*** Until the tenth anniversary of the Merger, fees for EFP transactions on the COMEX Division cannot be decreased from those in effect on January 28, 1994.

***Ex-pit Transactions.*** Following the Merger there will be no restrictions with respect to fees charged for Ex-pit Transactions on the COMEX Division.

***Fees Charged to COMEX Division Member Firms, Option Seatholders and Aluminum Seatholders.*** Following the Merger, fees charged to COMEX Division Member Firms, Option Seatholders and Aluminum Seatholders will be determined by NYMEX.

***Non-member Transactions.*** Following the Merger, transaction and clearing fees charged to non-members for transactions in contracts traded on the COMEX Division or executed by owners of COMEX Division Regular Memberships will not exceed the amounts of such fees charged to non-members for transactions in contracts traded on the NYMEX Division or executed by owners of NYMEX Division Memberships.

***"Off-the-Floor" Cross-Trading.*** Following the Merger, the transaction and clearing fees charged to COMEX Division Regular Members (but not COMEX Division Licensees or COMEX Division Member Firms) for trading NYMEX Division contracts for their own account from "off-the-floor" and to NYMEX Division Members who are natural persons (but not persons who lease or license such memberships) for trading COMEX Division contracts for their own account from "off-the-floor," will be established by the Board of New COMEX and will equal the mean between the lowest such fees charged to owners of COMEX Division Memberships and the highest rates charged to non-Members for contracts traded on the COMEX Division.

See "THE NEW COMEX BY-LAWS AND RULES."

**Dues and Assessments . . . . .**

Following the Merger, except in connection with Pre-Consolidation Liabilities, Option Seatholder Losses and Dispute Expenses (if any), dues and assessments with respect to the COMEX Division may not be imposed by NYMEX without the consent of the COMEX Governors Committee. The COMEX Governors Committee may levy such assessments as it determines to be necessary to fund the costs and expenses (including without limitation legal fees and expenses) which may be incurred in connection with any dispute arising under the Merger Agreement. A decision by the COMEX Governors to permit the imposition of, or to impose, dues and assessments is not subject to override by the COMEX Division Regular Members. Dues, fees and assessments received from Option Seatholders and Aluminum Seatholders will be excluded from the determination of whether the reimbursement obligation of COMEX Division Regular Members with respect to Option Seatholder Losses, Pre-Consolidation Liabilities and Dispute Expenses has been satisfied. See "THE NEW COMEX BY-LAWS AND RULES — The New COMEX By-Laws" and "THE MERGER AGREEMENT — Right of Recovery In Respect of COMEX's Pre-Consolidation Liabilities" and "— Option Seatholder Claims."

**Special Distribution to the NYMEX Members . . . . .**

In connection with the Merger, the Board of Directors of NYMEX authorized special distributions (the "Special Distributions") as follows: (i) an aggregate of \$21 million (the "Regular Member Special Distribution") (approximately \$25,735 per membership) will be paid: (x) with respect to each regular membership in NYMEX which is shown by NYMEX's records to have been leased as of the time of the Merger, to the natural person shown by NYMEX's records to be the lessor of the membership; and (y) with respect to each regular membership which is not shown by NYMEX's records to have been leased as of the time of the Merger, to the natural person shown by NYMEX's records to be the owner of record of the membership, and (ii) an aggregate of \$1 million (the "Lessee Special Distribution") will be paid to the persons shown by NYMEX's records to be lessees of regular memberships in NYMEX as of the time of the Merger. NYMEX Commercial Associate Members will not be entitled to receive any portion of the Special Distributions.

The Regular Member Special Distribution will be paid *pro rata* based on the number of regular memberships shown by NYMEX's records to be owned by each such person as of the time of the Merger. Any part of the Regular Member Special Distribution which is payable with respect to a membership which is shown by NYMEX's records to be subject to an "ABC Agreement" with a NYMEX Member Firm nonetheless will be made to the natural person shown by NYMEX's records to be the owner of record of the membership unless that person directs NYMEX, in a written notice received by NYMEX at least five days prior to the time of the Merger, to pay the distribution to the NYMEX Member Firm that is the party to the ABC Agreement, in which case the distribution will be paid as directed.

The Lessee Special Distribution will be paid *pro rata* based on the number of regular memberships shown by NYMEX's records to be leased by each such person at the time of the Merger.

If the Merger is not consummated for any reason, even if it is approved at the NYMEX Special Meeting, the Special Distributions will not be paid.

See "NYMEX SPECIAL DISTRIBUTIONS."

**Pension, Health and Welfare  
Benefits for COMEX Division**

COMEX MRRP . . . . .

COMEX has agreed in the Merger Agreement that prior to the Merger, the Recognition and Retention Plan for Members of COMEX (the "COMEX MRRP") will be amended to provide, among other things, that:

- No new participants will be admitted to the COMEX MRRP after the Merger;
- Only persons owning a COMEX Regular Membership or Option Seat at the time of the Merger may receive benefits under the COMEX MRRP; such persons must accrue 15 years of service during which such person's membership in a single membership category is not interrupted by a cumulative total of more than 365 days. A person holding an Option Seat at the time of the Merger cannot qualify for the larger payment to COMEX Division Regular Members by acquiring a

COMEX Governors Committee during which the COMEX Governors Committee considers actual or potential litigation against NYMEX. The COMEX Governors Committee may recommend to the New COMEX Board the adoption, alteration or amendment of any rule which pertains to matters affecting COMEX Division Members. Rule 8.44 of the rules of COMEX will be amended to grant fining authority for floor infractions to the COMEX Governors Committee in lieu of the Board Floor Group, which will no longer exist. Rule 8.44 also will be amended to require COMEX Division Member representation on panels hearing appeals from Floor Committee fines. See "— Special Matters" below for more information on the COMEX Governors Committee.

**Special Voting Rights.** The New COMEX By-Laws provide that COMEX Division Members will have no voting rights in the affairs of New COMEX, except with respect to specifically identified issues ("Special Matters") as set forth below. The Board of Directors of New COMEX may amend the New COMEX By-Laws and the New COMEX Rules relating to Special Matters only if certain procedures have been complied with. These special voting rights are not applicable to amendments made in response to a declared emergency; to accommodate a change in trade data input, trade processing or clearing systems; or as required by law.

**Special Matter Procedures.** Changes to Special Matters may be made as follows: If the New COMEX Board votes to take action on a Special Matter and the COMEX Governors Committee votes to approve the action by the New COMEX Board, then the Special Matter will be deemed to be approved if within 10 days after the giving of notice of the approval of the action by the New COMEX Board and the COMEX Governors Committee, COMEX Division Regular Members either (i) do not make a valid written demand for a special meeting or (ii) make a valid written demand for a special meeting and at such special meeting by the requisite vote they vote to approve the action. A valid written demand must be executed by the holders of 20% of the COMEX Division Regular Memberships then outstanding. The other way that a Special Matter may be changed is if the New COMEX Board votes to take action on a Special Matter and the COMEX Division Regular Members vote to approve the action by the requisite vote. In either case, the requisite vote will be a majority of the votes cast, except in the case of matters involving Competing Contracts, which will require the affirmative vote of 66% of the votes cast.

If NYMEX intends to take action with respect to a Special Matter in order to accommodate a change in trade data input, trade processing or clearing systems without the consent of the COMEX Governors Committee or the COMEX Division Regular Members, then the New COMEX Board is required to give the COMEX Governors Committee 21 days' prior written notice of the amendment or action unless the CFTC requires a shorter period, in which case the New COMEX Board is required to give the COMEX Governors Committee as much notice as possible under the circumstances and to allow the COMEX Governors Committee to consult with the New COMEX Board with respect to the amendment or action.

If NYMEX intends to take action with respect to Special Matters in order to take an action required by law then the New COMEX Board is required to give the COMEX Governors Committee reasonable advance written notice of such amendment or action and, if such amendments or actions are not reasonably acceptable to the COMEX Governors Committee, the New COMEX Board is required to undertake to present to the CFTC a reasonably acceptable alternative proposed by the COMEX Governors Committee and to permit a representative of the COMEX Governors Committee to participate in related discussions.

**Special Matters.** The Special Matters are:

- (1) Any change in the terms or conditions of any contract which is traded by COMEX Division Members as provided in Section 157(A)(1) of the New COMEX By-Laws.

(2) Any change in the COMEX MRRP as in effect on the date of the Merger, or any arrangement under which NYMEX provides COMEX Division Members with life, disability or health insurance benefits different from those granted to NYMEX Division Members under the Merger Agreement.

(3) Any action taken by the COMEX Division to discontinue trading in any futures contract or futures option which is traded on the COMEX Division.

(4) Any action taken by NYMEX to delist a gold, silver or copper contract from NYMEX ACCESS<sup>SM</sup> unless either (i) such contract has traded an average of at least 10 contracts per day during the previous six months; provided, however, that the foregoing provision with respect to average trading volume will not be applicable to any contract prior to the 12-month anniversary of the initial listing of such contract on NYMEX ACCESS<sup>SM</sup> or (ii) all trading of NYMEX Division contracts on NYMEX ACCESS<sup>SM</sup> is simultaneously stopped.

(5) Any amendment to Term Sheet Rules for COMEX Division Regular Members.

(6) Any amendment to Term Sheet Divergence Rules in a manner that affects COMEX Division Regular Members, unless such amendment makes the rules of the NYMEX and COMEX Divisions uniform or amends uniformly a Rule applicable to both the NYMEX and COMEX Divisions.

(7) Subject to subsections (1)-(6) above and (8) below, the adoption of any new by-law or new rule made effective with respect to the COMEX Division after the date of the Merger which applies to the COMEX Division in a manner different than the by-law or rule governing the same matter applies to the NYMEX Division. Any new by-law or rule adopted under this subsection (7), with or without a COMEX Division Member vote, shall be treated as a Term Sheet Divergence Rule.

(8) Any amendment to Section 100(A), 100(B), 103, 104, 105, 109(C), 157, 205(B), (D), (E) and (F), 207, 301(D), 309(F), 360, 500, 502 or 505 or to Article 4A of the New COMEX By-Laws that affects COMEX Division Members.

These provisions of the New COMEX By-Laws are summarized below.

- **Number and Types of Memberships (Section 100).** The New COMEX By-Laws provide that there will be two categories of memberships in New COMEX, the NYMEX Membership (of which only one is being issued to NYMEX) and the COMEX Division Memberships (of which up to 772 may be issued). Only the NYMEX Membership has the voting, liquidation and the other rights and privileges of a member under the NPCL. The rights of COMEX Division Regular Members will be contractual only and will not include any ownership or other rights under the NPCL, including any right to receive dividends or distributions whether arising from a dissolution, merger, consolidation or otherwise.
- **Fiduciary Duty (Section 100).** The Board and the officers of New COMEX and NYMEX are required to operate as fiduciaries with respect to owners of COMEX Division Regular Memberships including in the case of a reorganization, recapitalization, restructuring, spin-off, financing or other extraordinary transaction involving either or both of New COMEX, NYMEX or any successor of either of them. This fiduciary duty shall not (i) require an extension of any of the time periods specified in Section 157(A) of the New COMEX By-Laws relating to trading privileges, (ii) prohibit any transaction involving

NYMEX, or New COMEX which does not alter or diminish the contractual rights of the COMEX Division Regular Members under the New COMEX By-Laws, the New COMEX Rules, the Merger Agreement, the Notes or the Note Agency Agreement or (iii) prohibit the liquidation, dissolution or winding up of New COMEX in the event that the aggregate amount of Pre-Consolidation Liabilities exceeds the total Merger Consideration. The Boards of New COMEX and NYMEX may not, without the affirmative vote of the owners of 66 2/3% of the COMEX Division Regular Memberships entitled to vote and voting at a meeting, grant to any other person trading rights in gold, silver, copper or Eurotop 100 contracts, or any COMEX Division Replacement Contracts, or, without the vote of the owners of a majority of the COMEX Division Memberships entitled to vote and voting at a meeting, grant to any other person the right to trade in New Metal Contracts.

- **Dues and Assessments (Sections 103 and 104).** The New COMEX Board may assess such dues and assessments as it determines only with the consent of the COMEX Governors Committee, except with respect to dues to cover Pre-Consolidation Liabilities, Option Seatholder Losses and Dispute Expenses. See "— COMEX Division Fees" and "— Dues and Assessments." The COMEX Governors Committee may levy such assessments as it determines necessary to fund the costs and expenses (including legal fees and expenses) which may be incurred or are anticipated to be incurred in connection with any dispute arising under the Merger Agreement. See "— Dues and Assessments."
  - **Fees (Section 105).** See "— COMEX Division Fees" for a description of this section of the New COMEX By-Laws.
  - **Restrictions on Transfer (Section 109(C)).** The New COMEX By-Laws provide that no restriction on transfer applicable to COMEX Division Regular Memberships shall be more restrictive than those applicable to NYMEX Division memberships.
  - **Trading Privileges (Section 157).** See "— New COMEX Trading Privileges"; "— Dual Trading"; and "— The Merger Agreement — Special IPO Payments" for a description of this section of the New COMEX By-Laws.
  - **Special Matters (Section 205).** The provisions of Section 205 that are Special Matters relate to election of the COMEX Governors Committee, the voting procedures with respect to Special Matters and the introduction by NYMEX of Competing Contracts.
- Petition Rights (Section 207).** Under the New COMEX By-Laws a matter will be placed on the agenda of the New COMEX Board upon receipt of a request signed by 10% of the COMEX Division Regular Members. The request must specify its purpose and be submitted to the Secretary of New COMEX no less than 10 nor more than 50 days before the meeting of the New COMEX Board at which it is to be on the agenda. The Board of New COMEX is not required to act on any such matter.
- Rule Changes — (Section 301(D)).** The Board of Directors of New COMEX may adopt, amend, rescind or interpret the New COMEX Rules. To the extent that an amendment or deletion or other action of the Board relates to any Special Matter, it will not be effective without either (i) the prior consent of the COMEX Division Governors Committee which shall be subject to the veto rights of the COMEX Division Members or (ii) the prior approval of the COMEX Division Members by majority vote of the votes cast at a meeting of a 66 2/3% vote with respect to the approval of Competing Contracts.

- **Attendance at Meetings (Section 309 (F)).** See "— Corporate Governance and Special Voting Rights — Board of Directors" for a description of this section of the New COMEX By-Laws.
- **Indemnification of Directors, Officers and Employees of New COMEX. (Section 360)** By-Laws provide for indemnification to fullest extent permitted by law for officers, directors, employees, members of any committee of New COMEX or persons who serve at the request of New COMEX in any capacity with any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, as long as (i) such person did not act in bad faith and (ii) in criminal actions or proceedings such person had reasonable cause to believe that his conduct was unlawful.
- **Qualifications of Members of COMEX Governors Committee (Article 4A).** Not more than one person who is a partner, officer, director, employee or affiliate of a COMEX Division Regular Member or a COMEX Division Member Firm will be eligible to serve as a member of the COMEX Governors Committee. If as a result of a change in affiliation of a member of the COMEX Governors Committee or as a result of a merger, sale or consolidation of two or more COMEX Division Member Firms, two or more persons are serving on the COMEX Governors Committee, at least one such person must resign. If a member of the COMEX Governors Committee, other than a member representing NYMEX, is elected to serve on the board of another commodities exchange or any clearing organization affiliated therewith, or of a securities or options exchange, and it is determined to serve thereon, the member must resign from the COMEX Governors Committee. For a description of the provisions of Article 4A of the New COMEX By-Laws, See "— Corporate Governance and Special Voting Rights — COMEX Governors Committee."
- **Special Meetings of the COMEX Governors Committee (Article 4A).** Special Meetings of the COMEX Governors Committee may be called by the Chairman of the COMEX Governors Committee or any member of the Board of New COMEX and shall be held upon the written request of five members of the COMEX Governors Committee. A majority of the members of the COMEX Governors Committee will constitute a quorum.
- **Resignation or Removal of a NYMEX Representative on the COMEX Governors Committee (Article 4A).** A NYMEX Division Member serving as a member of the COMEX Governors Committee may be removed in the event of his refusal, failure, neglect or inability to discharge his duties, for any cause adversely affecting the best interests of NYMEX or for missing three consecutive meetings without justification. The removal is not effective until the person's successor is appointed and qualified, unless the Chairman of the New COMEX Board fails to appoint a successor within 10 days of notice, in which case the removal will be effective 10 days after the request to the Chairman of the COMEX Board. If a NYMEX Division Member of the COMEX Governors Committee has resigned and the vacancy remains unfilled for a period in excess of 35 days, the Chairman of the New COMEX Board may appoint a member of the New COMEX Board to fill the vacancy.
- **Recall of Members of the COMEX Governors Committee (Article 4A).** The New COMEX By-Laws specify recall procedures for holding a recall election to determine if a Governor shall remain in office. Recall of members of the COMEX Governors Committee requires the affirmative vote of 60% of the COMEX Division

Memberships voting in the recall election. No member of the COMEX Governors Committee will be subject to recall within six months of assuming office or to more than one recall election in any 12 month period. A vacancy created as a result of a recall will be filled at the next meeting of the COMEX Governors Committee.

- ***Tenure in Office; Classification of Governors; Vacancies (Article 4A).*** The New COMEX By-Laws provide that the Chairman of the COMEX Governors Committee will serve a two year term and members of the COMEX Governors Committee will serve a term of three years. The COMEX Governors Committee will be divided into three classes with staggered terms of office. Immediately after the Initial Special Election the members of COMEX Governors Committee elected as representatives of each of the floor group, the trade group, the commission group and those members of the COMEX Governors Committee elected to serve at large will draw lots among themselves to determine which shall have terms expiring in 1995, 1996 and 1997, respectively. Vacancies will be filled by appointment made by the remaining members of the COMEX Governors Committee provided that if the vacancy being filled was held by a member of a particular group, then the person appointed to succeed him must be a member of the same group. In the event of a vacancy in the office of the Chairman of the COMEX Governors Committee, the COMEX Governors Committee shall designate one of its members to act as Chairman until the next annual meeting of COMEX Division Regular Members, at which time a successor will be elected by the COMEX Division Regular Members to fill a new two-year term of office.

- ***Petitions for Election to the COMEX Governors Committee (Article 4A).*** Nominations for the COMEX Division representatives on the COMEX Governors Committee, including the Chairman, must be made by petition timely filed with the Secretary of New COMEX, and signed by no fewer than 40 COMEX Division Members in good standing, except that nominations for a group representative (Trade, Commission House or Floor) must be made by petition, signed by not less than 10 members of the applicable group in good standing.

- ***Concurrent Group and At Large Election (Article 4A).*** A COMEX Division Regular Member may not stand for concurrent group and at large election or for concurrent election to the COMEX Governors Committee as a representative of the Trade Group, Commission House Group or Floor Group and to the office of the Chairman of the COMEX Governors Committee; however, a member serving on the COMEX Governors Committee whose term does not expire at the time of the annual election may stand for election as the Chairman of the COMEX Governors Committee.

- ***By-Law Amendments (Section 500).*** Any By-Law of New COMEX, other than those designated as Special Matters or which relate to the Supermajority Matter or those relating to the COMEX Governors Committee, may be amended by a vote of 66% of the New COMEX Board. Amendments to Article 4A of the New COMEX By-Laws may be proposed by one or more members of the COMEX Governors Committee, by a petition signed by not fewer than 50 COMEX Division Regular Members or by the Board of New COMEX.

- ***By-Law Amendments Affecting Existing Contracts (Section 502).*** Unless provided to the contrary in the New COMEX By-Laws or New COMEX Rules or in the resolution adopting an amendment or deletion of the New COMEX By-Laws or New COMEX Rules,

any amendment or deletion of the New COMEX By-Laws or New COMEX Rules that relates to contracts traded on the COMEX Division will be binding on contracts entered into before and after such amendment or deletion; except where the change affects the amount of money to be paid, or grade, quality or quantity of merchandise to be received, in which event the amendment or deletion will be effective only with respect to the delivery month immediately following the last month in which there is an open position on the date such amendment or deletion becomes effective.

- **Mergers, Sale of Assets, etc. (Section 505).** The New COMEX By-Laws provide that NYMEX will not enter into or effect any transaction involving the merger or consolidation of NYMEX or the COMEX Division with or into another entity, the sale, transfer or lease of all or substantially all of the assets of NYMEX or the COMEX Division or its successor or any similar transaction unless (i) the surviving or acquiring entity agrees to provide the protections with respect to Special Matters and those matters as to which COMEX Division Regular Members are accorded third party rights under the Merger Agreement and (ii) except in the case of a merger or consolidation of New COMEX with and into a subsidiary of NYMEX, the NYMEX Division is transferred to such entity together, and simultaneously with, the COMEX Division.

Any amendment to a Term Sheet Rule or Term Sheet Divergence Rule will not affect the character of such rule as a Term Sheet Rule or Term Sheet Divergence Rule, unless and only to the extent, specifically so stated in the notice to COMEX Division Regular Members in connection with a Special Matter.

**Supermajority Matter.** Any amendment to the New COMEX Rules or New COMEX By-Laws to grant NYMEX Division Members floor trading privileges for gold, silver or copper futures or futures options contracts approved for trading on the COMEX Division at the time of the Merger requires a vote by 66 $\frac{2}{3}$ % of the COMEX Division Regular Members voting at a meeting.

**Financial, Physical and Other Emergencies.** The New COMEX By-Laws contain provisions relating to financial, physical and other emergencies that are substantially identical to the corresponding provisions contained in the NYMEX By-Laws.

#### **Disciplinary Procedures**

**Failure to Pay Dues, Assessments and Fees.** If a COMEX Division Member fails to pay any dues, assessments or fees when due and such failure continues for 30 days after notice, the person will be suspended automatically from all rights and privileges of membership, until such failure is cured subject to the right of the Executive Committee of the New COMEX Board to extend the 30 day period. A member who has been suspended will thereafter be expelled from membership on the COMEX Division if the unpaid dues, fees or assessments are not paid within 30 days of the suspension. In addition, such member will also be required to pay a penalty equal to at least 20% of the amount due.

**Effect of Suspension.** A COMEX Division Member whose rights and privileges of membership have been suspended shall continue to be subject to the New COMEX By-Laws and New COMEX Rules, liable for all dues, assessments, fees and fines and obligated for all contracts, obligations and liabilities entered into or incurred before, during and after such suspension.

**Effect of Expulsion.** A COMEX Division Member who has been expelled shall continue to be subject to the disciplinary and arbitration rules, liable for all dues, assessments, fees and fines imposed